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PRACTICING LAW AS A PROFESSION AND LOOKING AFTER JUDICIAL RESULTS AS A BUSINESS.

The season for the meeting of bar associations is on, with the grand climax to be staged by the American Bar Association in the early fall. In this time of so much said and to be said about ethics, simplification of judicial procedure, uniform legislation and other things, should the editor's say be conspicuous by its absence? With the risk of consignment to a deeper oblivion by speaking than by remaining silent, we make an attempt at being a little heeded for our speech.

Is the mordant tooth of the age eating away, in swift corrosion, practice of the law as a profession? That tooth may not represent the spirit of the age, but merely one of the forces which by sufferance it allows. We say, for example, there is an age of invention, but this only means that in the age the name of inventors is legion, for there never has been an age when their inventions might not have been welcome, or forged to the front though unwelcome.

So when the cunning of evil discovers avenues for commercial exploitation, self-interest is the *deus ex machina* for its propelment. It rises and flourishes under the aegis of competition, if it gives, or seems to give a fuller *quid pro quo* to individual man. It may matter little that in the long run its benefits may be specious to individuals and poisonous to the body politic. The very members of that body, in their several way, are its inoculators, unwillingly, perchance, but by force of circumstances so. The false forges its chains for the true.

Therefore, if the honorable, the profession of the law may, like the poet's eagle, behold talent it has nurtured winging darts of destruction against its breast, does it not behoove us to inquire, whether our record may make successful appeal in its defense? There is but one ground upon which this appeal may be made, and this is public policy.

Sentiment among lawyers, though it rise as high or be as profound as patriotism itself, comes not into play in such supposed emergency. The people must feel that zeal, ambition, morality and ethics in the practice of the law as a profession must be encouraged and protected, because its followers are public servants in the administration of justice.

We have to acknowledge that there are handicaps in the fact that many of the brightest and, financially, most successful members of our profession have done worse than hide their talents in a napkin. If these would merely stand aloof in the fight that ought to be made, though the tongues of their brothers lash them as with scorpions, we ought to feel reasonably glad. But we fear they still will be given high places in our councils and discredit us either as visionary idealists or as fighting with our backs to the wall to preserve our means of livelihood. If already they

"bend the pregnant hinges of the knee
That thrift may follow fawning,"

they give little promise of resistance to this becoming a habit, e. g., recent exposures in Washington.

What is the situation in respect of matters of a legal nature attended to by individuals and agencies other than attorneys licensed to practice law? Some of the things that formerly were accustomed to be done by lawyers naturally have drifted away. Among these are the investigation of titles to realty and the drafting of deeds. Complaint about this may not be reasonably made. If a party may appear *pro se* in a court, it is still less that he should be allowed to act in his own behalf in a sale and employ a sort of scrivener to put down in writing what he has done. This applies to mortgages, and all other papers incident to any transaction within the free right of contract. It is merely the lawyer's misfortune that revenue from these sources may be slipping away.

When, however, one not a licensed practitioner, or a corporation, offers his or its services in the drafting of wills or articles of incorporation, there is a different phase to the matter. To devise or bequeathe property is to exercise a privilege and there is as much of public policy in requiring that the body of the instrument be skillfully framed as that its execution shall be after a certain manner. An abortion either way is abhorred. So as to drafting a charter for an artificial being. The law's policy is that pretence of lawful existence is to be avoided and that powers shall be clearly defined. There are rights wholly apart from testators and stockholders in the framing of wills and charters and it is public policy that these should be in professional hands.

But, whatever may be thought of this, it cannot be doubted that no one has the right to represent in the name and behalf of others, causes in court, unless he be a licensed practitioner and to be such, the state requires that he possess certain personal qualifications, of which possession he shall have submitted requisite proof.

It boots nothing to speak of the profession being protected in the exclusive right of its members to appear in court for others. The law has no such purpose. It means to protect the public. And it means more than protection against incompetency, negligence and unskillfulness on the part of practitioners. It means also to guard against infidelity and immorality on the part of practitioners. Therefore, human beings with personal accountability, only upon authority of a party to an action, may represent him.

We know, however, that corporations undertake to defend causes brought against their clients upon the strict condition that their power shall extend to doing what they see fit to do in causes entrusted to their management. How do they do this? By hiring lawyers, who, while pretending to represent a party to an action, are controlled entirely by their hirers.

Concede, if you wish, that there is an open secret as to how some lawyers come to be in cases, and, therefore, they are guilty of no deception before the court. But we may say it is also an open secret that these corporations solicit business these lawyers represent and the conduct of their agents in and about suits that are represented is not such as would be countenanced by the lawyers themselves, without subjecting themselves to disbarment. They will accept fees, however, and salaries from a machine whose dividends are to come from questionable practices.

Furthermore, may a lawyer ethically represent a corporation that interjects itself between a plaintiff and a defendant and compels the latter to continue to litigate whether he wishes to or not? Does he interfere legitimately with plaintiff's rights to settle with his adversary, if he can? If neither of these things is proper to be done, contract or agreement to the contrary notwithstanding, in what is a corporation of this kind but a common barrator, and what are its agreements but those of champerty and maintenance?

If we would press upon the public mind that the safety of the state is in its judges being recruited from professional ranks where high ideals are to be looked for, then legislatures may condemn practices, which spread a mildew from fens of avarice and greed over our profession. Before, however, it will take us seriously, we must place the brand of disfavor on the talented and successful in our ranks, as well as upon the starveling and the bum the public calls a shyster. The retained lawyer of a corporate ambulance-chaser may "fare sumptuously every day;" but what is he in ethics as compared with others?

NOTES OF IMPORTANT DECISIONS

VENDOR AND PURCHASER — INFANT PAYING CONSIDERATION BY NEGOTIABLE INSTRUMENT.—The Texas Court of Civil Appeals, holding that one who is a bona fide purchaser without notice of a superior outstanding

title giving negotiable notes in payment for land gets a valid title, yet rules that a purchase in this way by a minor constitutes an exception and he is only protected to the extent that his disaffirmance may not place him in statu quo ante. Nellius v. Thompson Bros. Lumber Co., 156 S. W. 259.

The court said: "Whereas in this case, it is not shown that the notes given for the deferred payments are negotiable, or where it is shown, as it was in this case, that the purchaser before he has paid notes given for part of the purchase price are still in the hands of his vendor, receives notice of a superior outstanding title, then the rule seems to be that he will be protected only to the extent of the actual payments made by him before receiving such notice." Up to this point the question of minority cuts no figure, but the court further says: "But even had it been shown that negotiable notes had been given by appellant for part of the purchase money, we would, under the facts of this case be constrained to hold that the judgment (giving appellant lien for what had been paid in cash) is correct. Appellant at the time he gave the notes and at the date of the judgment was a minor and (vendor) then had possession of the notes. Should suit be brought by (vendor) against appellant on the notes, he could plead his minority in avoidance, or on becoming of age he could disaffirm his contract. And, even if the notes have passed into the hands of an innocent purchaser for value before maturity, the purchaser's rights could not avail as against the minor's right to disaffirm, because the right of an infant to avoid his contract is an absolute and paramount right, superior to all equities of other persons."

Here was an action in which the minor was insisting upon his contract, but the court uses his personal privilege of disaffirmance as a means to enforce what it deems a rule of justice. The pro tanto protection accorded an innocent purchaser so well recognized by American courts has been applied in different ways—one to retain the land purchased the proportioned paid for, others to decree a lien for the amount paid and a third to give him all the land and with him to pay the remainder to the holder of the outstanding title. It seems to us the third rule, at least, in a minor's case, ought to be that adopted, but the court enforced the second one. The trouble arose from lack of registration and that ought not to work prejudice against a bona fide purchaser—not even an adult purchaser.

IN WHAT SPIRIT SHOULD THE LIABILITY LAWS BE RECEIVED?

It has often been stated, that reform of law is of no or little avail, as long as a preponderant public opinion has not been formed, which demands the reform, and sustains it when made. This is quite true, and may even be narrowed down to the assertion, that a reform in the law will not work out as intended, unless those who have to do with the enforcing of the new law are convinced that it is sound and rests on correct legal principles; otherwise they will, by strict construction, differentiations etc. narrow the new law and its effects down to fit with their own conceptions of sound and correct legal principles.

In 30 of the states, Employers' Liability laws or Workingmen's Compensation laws have been passed, whereby the fellow-servant rule, the assumption of risk doctrine and, to some extent, the contributory negligence theory have been legislated out of existence. In probably all of the remaining States and Territories similar laws are in course of preparation, or actually before the Legislatures for passage. As the Federal Government has enacted laws of the same character within its sphere of authority, it may safely be predicted that within a few years, the relation of master and servant will have been placed on an entirely new basis within the whole United States.

But this means that within this province of the law, an entirely new jurisprudence will have to be evolved.

The fellow-servant rule was established by Lord Abinger in Priestly v. Fowler, 3 M. 1 W. 1. (1837) and finally confirmed in the case of Barstonhill Coal Co. v. Reid, 3 Macq. House of Lords cases, 266 (1856). The assumption of risk doctrines dates from Judge Shaw's decision in Farwell v. Boston, etc., R. Co., 4 Met. 49 (1842).

Since then, or for about 70 years, it has been the law of England and America (except where changed by statute) that a servant cannot recover damages from his

master for injuries suffered in his service, unless he proves the master personally to be at fault. That means that every lawyer now living, besides a great number now dead, in other words several generations of lawyers, have not only been instructed and brought up in these thories as good law, but as judges and attorneys have made daily applications of them to cases coming before them. For many, many years there have been no arguments about them; they formed part of the law, and any argument, pro or con, could have nothing but academic interest. This being the case, these theories have, so to speak, entered the blood of all lawyers, who will be apt and bound, in applying the new laws, to interpret and restrict them in accordance with their theories of what ought to be the proper law in the matter.

And the danger of such an unfriendly attitude on the part of the bench and bar, is so much the greater, because the arguments brought forward in defense of the reform have been solely or mainly of a political nature. The reformers have very naturally sought to get across where the fence was the lowest, and in arousing a public opinion, it has been of much more value to them to show the social failings of these rules than their possible unsoundness in law.

It has often been stated that prior to the adoption of the theories named, the liability of an employer to his servants was not different from that he incurred to a stranger. This is not quite correct, as for a long time there had been a tendency to require fault on the part of the employer in order to allow the servant to recover, but not until the rendering of the above decisions did this question become quite settled.

The ancient and original rule (and we believe it may be traced back to the Egyptians) may be stated as follows:

1. No man is responsible for the consequences of another's man's acts.

2. Every man is responsible for the consequences of his own acts.

Except that:

3. He who employs another to act for him, becomes responsible for all the consequences of the employe's acts, to the general public, to the individual stranger, to the employe himself.

4. He who acts upon the order of another, whom he is bound to obey, does not become responsible for the consequences of his acts under such order.

The reasons for these exceptions are:

5. He who employs others to act for him, thereby makes their acts, in compliance with his orders, his own acts.

6. He who employs others to act for him, is bound to supervise the performance.

7. He who employs others to act for him, takes the profits arising therefrom, and must assume the risks.

In tracing these rules back, we meet the difficulty that it is almost impossible to cite particular applications of them. In the ancient world, almost all of what we call work was performed by slaves. Now, there is no doubt about the liability of the master for the acts of the slave (even when they were without or against his orders): he was responsible to the State and to the stranger. He was even responsible for the consequences to the slave, as he, the master, must suffer the loss of the slave's life, health or temporary incapacity and (in later times) must support the slave until his death, if he was totally disabled. But the slave had no right of action; he was a chattel, and it was because he was the master's chattel, that the latter became absolutely responsible for his acts.

Employment by one free man of another free man to do the former's work, was almost an unheard of thing in the ancient world, and for this reason it is next to impossible to produce concrete confirmations of the above rule. Where we know of such employment, it refers to the retaining of a lawyer, or the engaging of a

poet to write an epitaph, or the like, always employments where there was no risk of accidents; where there was no profit as such, to be made out of the employment, and where the employer could not supervise, because he did not have the necessary qualifications to do it.

The ancient Germanic society was mainly organized on a co-operative basis. They owned their land in common, and their assembly decided all village questions; their elder (olderman) was not a master, but a mere representative elected to supervise the execution of the by-laws. In the same way, their Kings, Earls (Jarl, Herzog) were mainly spokesmen and leaders in war, but without any individual initiative to give orders. They were not masters, but representatives of all the free men (par inter pares).

The Germanic World in conjunction with and by the help of Christianity succeeded in abolishing slavery, but were unable to maintain their organization as that of a co-operative society of free men. The slaves (thralls), although liberated, did not rise to social equality with their former masters (difference in race stood in the way in most cases, as in America after the emancipation of the slaves); on the other hand, the more complicated conditions of their new states, as distinct from their old agricultured communities, forced a concentration of power. The King grew from par inter pares to primus inter pares, then to be the representative of the whole people, and as such to be the highest authority in the land. The earls underwent a similar evolution, while as a necessary result the poorer and weaker strata of the free men gradually sank down to the level of the freed.

With this development came feudalism, because it was necessary for the King to have a sufficient number of men upon whom he could depend. In the birth of feudalism we really have the first authentic example of the employment of one free man by another; and here we must look for the principles which originally governed such employment, and here we may, to a great extent, learn what principles ought to govern such relation.

The knight became "the man" of his lord, the lord that of the King. What was meant by this? It meant that the knight put himself absolutely under the orders of his lord, agreed to be at his beck and call for any work of the lord's, provided it was of the kind which a free man could properly do. A free man could not do the work generally performed by villains and serfs without disgracing himself and losing caste. But within his sphere of work, "his primary duty was that of obedience," Patterson v. P. & C. R. Co., 76 Pa. 389.

What were his rights, when he carried out his master's orders? Was he subject to any fellow-servant rule? Was he supposed to assume the risk of his employment? Did he forfeit his estate if his wounds etc., were partly caused by his own contributory negligence? Nothing of the kind. His employer became, from the very beginning of the relation his insurer. And, owing to the then existing social conditions, the indemnity was paid in advance. The physical risks of his employment the knight had to assume, of course; he might be killed, wounded or imprisoned. But the economic risks were borne by the employer, and in all cases. The fief remained as compensation for himself, his widow and children, and his ransom was paid by his employer. The employment (generally a fight) was the employer's enterprise; he received all of the direct benefits therefrom, but he also had to stand for all of the costs and consequences.

Such were the relations established when for the first time on any general scale, free men entered into relations with each other as master and servant.

We cannot here trace in detail how matters developed. Suffice it to say, that through the following centuries, first the knights, then the burghers and finally, by their help, the kings developed their power, and that during all of these many years the distinctions between free men, serfs

and burghers gradually grew less, until one hundred years ago, more or less, all men were declared to be free and equal before the law. But this declaration had but a very limited and slow effect in changing men's social standing. What is called "society" had originally consisted of the nobles, only; there were gradually added the nobility of the cloth, of the robe, of the professions generally, and of the merchant princes. But men doing manual labor of any kind were strictly excluded. This was the work the slaves and serfs used to perform, and the memory thereof has not to this day been wiped from men's minds. Much less was this the case in Lord Abinger's days. It is quite interesting now to read the lord's opinion. He is not bound by precedents, and feels that he is establishing one. He avoids carefully to treat the question directly, but reaches his conclusion by an excuse or excuses. If, says he, the employer is responsible to one employe for another employe's negligence, then he will also be responsible to him for the negligence of his coach-maker, bed-maker, etc., yes, if the master and employe stand together at the bottom of a building being put up by the former, and it, owing to a defect in the foundation, falls down and kills them both, the master's estate would be liable to those dependent on the servant. But such a result cannot be accepted. Hence the fellow-servant rule. We do not imagine that any of Lord Abinger's excuses would be accepted as sound to-day. The master, it is now agreed, must furnish a safe place to work in (even if it be a wagon), and when it is the duty of the servant to sleep in his master's house, the latter will, we imagine, also be held to the duty of furnishing a safe bed to sleep in. And as to the building, nobody doubts to-day, that the employer cannot raise the fellow-servant rule as a defense against his own negligence. If the case had been that of the lord himself being injured by the breaking down of his hired carriage, or of his bed in an inn, he would have had very little difficulty in fixing the responsibility on the owners of the carriage or the inn. But this is different, you say. The livery stable man is a common carrier, and the owner of the lodging is an innkeeper. They make a business of hiring out carriages and rooms and receive compensation and presumably, a profit therefor. But does the employer not make a business of and receive a compensation and, presumably, a profit from giving employment to his servant? If he did not, he would not employ him.

This case is an excellent example of the dangers of the case law doctrine. Not one of Lord Abinger's arguments will hold water to-day; nevertheless, the decision stands.

The secret of both Lord Abinger's and of Judge Shaw's decisions (and to a less degree of all later decisions having followed and elaborated them) is that the plaintiff was a servant. In the first case, this servant was not even employed in any hazardous occupation, but was a sort of house servant, against whom the employer probably had the right of chastisement. How could a man whom you could order about to do any menial work, set up a claim of damages against his master for an injury received while in his employ, when it was not caused directly by an act of the employer? Of course, such a thing could not be conceded. And while in the case decided by Judge Shaw, the plaintiff was an industrial worker, still the feeling that runs through it is the same.

Here was an employer having invested a great deal of money in an enterprise which was for the general benefit of the community. Employes are generally careless of their employer's property and of the life and health of themselves and their fellow employes. If an employer must be held liable for injury to one employe, caused by the negligence of another, then he would soon go bankrupt, all of the money invested would be lost, the community would suffer from the stopping of the beneficial enterprise and, worst of all,

nobody else would put their money in such risky investments.

The word "policy" runs all through this decision. No reason is stated, why an employe cannot recover as well as a stranger; it is simply stated authoritatively that he cannot. In one particular this case is very amusing. In the case stated, upon which the question of responsibility was argued and decided, it is agreed that the fellow servant, supposed to have caused the accident, had been known to the plaintiff for years as a careful man. Then in the course of his opinion the judge states that the servant should assume the risk because he has a better opportunity than the master to watch his fellow servant, and, if he finds him negligent, to take the necessary steps to protect himself (quit and starve, we suppose.) So in this case, where it was agreed that the fellow servant had never before been negligent, the plaintiff cannot recover because he should have watched this fellow-servant and discovered his carelessness, which never had manifested itself.

As industrialism grew, and damage cases became numerous, the vague theories of Lord Abinger and Judge Shaw developed into a distinct theory, which is stated in the American and English Encyclopedia of Law as follows: "The fellow servant rule proceeds on the theory that the ordinary risks of employment, of which negligence of co-servants is one, are taken into consideration by both parties in agreeing upon terms of a contract of employment, and in fixing the compensation, and that, therefore, every person who enters upon the service of another must be assumed to have taken upon himself all the ordinary risks of the employment, including the negligence of competent co-servants."

This sounds quite plausible.

Suppose we turn it around and say: "The rule that an employer is an insurer of his employes proceeds on the theory, that the ordinary risks of his business, of which damage to employes through negligence of co-servants is one, have been taken into consideration by him before he undertakes his enterprise and fixed his price, and that, therefore, a person employing others to do his work must be assumed to have taken upon himself all of the ordinary risks of the enterprise, including the negligence of servants to co-servants."

This sounds equally plausible, and is equally reasonable.

The trouble with both statements is that they float in the air. They "proceed" on theories instead of facts, and they are built up on fictions as to what men must be "assumed" to have taken upon themselves. But law, or sound law, cannot be built on theories, fictions and assumptions; it must be built on facts, or it will propagate injustice, instead of establishing justice. That is what these theories have done, until it has become necessary to root them up by statute.

The main fault is, of course, that courts have gone into the examination of the problem with the fact before them that there was a contract between the employer and employe. From this they have concluded that such contract must cover all relations arising between them, either expressly or impliedly.

The classical school of lawyers have done law and jurisprudence an inestimable service in bringing back to honor the power and the effect of the human will in establishing legal relations among men, but they went too far and wished to see a contract in almost all legal relations; "contract" became a fixed idea with them, until they even came to consider the state and society as results of contracts. At the bottom, they did not believe that the question of damages for injuries were included in the contract. If the employe should sue for such damages they were all agreed that he must sue in trespass, and their books all treated of such damages under the head of torts. If there had been anything in the contract theory, such action must have been brought in assumpsit. It will be argued, of course, that this is not so. When

the employer is acquitted, it is because there was a contract to that effect; but when he is held responsible, it is because he was negligent and guilty of a tort. But this will not hold water. If there is a contract as to when the employer shall not be held responsible, there must of necessity and by elimination be a contract as to when he shall be held responsible, even if his responsibility is to be determined "according to law." This again shows how inconsistent and unsound is the attempt to impart an implied contract into this relation.

The idea that possible dangers, which are not an integral part of the employment, are taken into consideration by either party in fixing the compensation, is pure fiction. The only consideration actually ruling is the service rendered.

The conductor of a train is paid at a much higher rate than the Italian line worker, although the latter is in much more danger of being injured, especially since he works among a lot of less intelligent fellow servants. And even where the employment is in itself dangerous to health, without considering accidents, the moment the servant makes that a reason for demanding higher wages, he is replaced by cheaper labor. The American file cutter and grinder would not work at these lung destroying trades without being better paid: he is a thing of the past, the Pole and other Slavs, with their tougher constitutions, having taken his place..

What confronts us is a "situation" and not a "theory."

All men must live. Most men, in order to live, must work. Some few work for themselves, without either employing labor or being employed. Quite a number employ others to do the greater part of their work. But the vast majority are employes.

In order that the business of society may be carried on, it must pay; if it does not. it will ruin, not only the owners of the various establishments, but in the long run nearly all other members of society. In order that modern business may pay, there must be rapid transit by mechanical means. there must be modern machinery. The modern improvement of highways has lessened the chance of accidents arising from the conditions of the roads, but the introduction of the mechanical means of transportation and manufacture has enormously increased the chances of injury while being transported and while working.

The employment of machinery in both transportation and the industries is a necessity, not only to the transportation company and to the manufacturer, but to the whole of society.

But you cannot employ any kind of machinery without risking accidents; they follow such employment as sure as night follows day. You can, in some few cases, put your finger on the only and absolute cause of such accident, but in most cases you must admit that it was an accident that the accident happened. And even when you can locate the proximate cause, if you analyze it, you will generally find that it was due to an accident also. The man at fault had always been careful before, but the night before the accident, he, for some reason, did not sleep well, or for some other cause he was not up to his usual form, and something slipped for him.

Transportation and Industrial accidents are, therefore, a situation, a condition, inseparable from transportation and industry as carried on to-day. They are part of the waste necessarily resultant from society's activities, in a somewhat similar way as law suits. And they should be provided for in the same manner. There was a time, and in some places not so very long ago, when the judges received their compensation through fees paid them by litigants. But that has passed. To-day judges are paid by the community generally, because it is acknowledged that the necessity of the bringing of a law suit cannot justly be blamed on the parties thereto; society, which is the lawmaker, cannot make its laws so clear and full, that no doubts can arise, and the primary cause of lawsuits is this inherent weakness and imperfectness in the lawmaker himself.

When the problem of industrial accidents first faced the courts, they saw how practically unavoidable such accidents are, and it appeared to them that, if the financial burden thereof were to be put upon the employers, it would ruin them, and their ruin would be to the greatest injury to society. On the other hand, the risk could be safely put on the employes, that is, such placing of the risk would not involve any financial losses which would weaken the industries in question, and thereby injure society generally. For the loss to the employe of his earning capacity would not, except very indirectly, and very remotely, endanger or destroy any invested capital, and a new man, to take his place, could always be secured, free of charge.

The courts cannot be blamed for seeing the danger involved, but only for going outside their proper province and try to provide against it, in other words, to legislate.

The fear has proved itself to be groundless. On the continent of Europe, where the fellow-servant rule and the assumption-of-risk doctrine have never held sway, and where the contributory negligence rule has had a much narrower application, no industry went down on that account. Modern industry being a necessity, the remedy for the danger (the accident insurance company) appeared at once. At that time, the wider aspect of the question had not become apparent. Each employer must attend to the accidents of his own business, and it was left to the insurance companies to equalize the burden among all employers of the same character.

But in course of time, governments and thinkers became more and more convinced that modern society is built upon rapid transit and mass-production. The dangerous business is, or may be, as necessary as the one less hazardous, without in all cases assuring a greater profit. They agreed that, even if the proximate reason for men undertaking dangerous business and occupation is their individual (selfish, if you like) hope and desire for profits and wages, the ultimate reason are the necessities of society at large.

For that reason it becomes, not only to the interest of society at large, nay, it becomes the duty of society, or of the state, to protect both employer and employe against ruin by these unavoidable incidents to their business. In the carrying out of this thought, great variation may be found, but two distinct types may be marked. In England and America we have "Employers' Liability Acts" or "Workingmen's Compensation Acts," while on the continent we find "Workingmen's Insurance Acts." The names do not make much difference, but in the names is hidden a difference in principle. The English and American acts, owing to the peculiarities of the law prior to them, have been looked upon as a special legislation intended to be in favor of the employes and, therefore, as directed against and inimical to the employer. In Europe, it has always been clearly understood that the insurance acts were meant and intended to, and did actually, work for the benefit of both employe, employer and society at large. The money paid out under them, goes exclusively to the employes, and this insurance feature has given the acts their names; but the employers are, through the working of the same system, actually insured against ruin caused by industrial accidents.

Who should pay the premiums, and in what proportion, is a detail, as to which the last word has not been said. Toll roads are still amongst us, but in the main, we have reached the point where the building and upkeep of roads are paid for by the whole community out of the general tax funds. Where railroads, telegraphs and telephones are owned by the state, the demand for money dividends on the investment has a tendency to disappear, as a state, in making up its balance sheet, is justified in taking into consideration the indirect benefits, a thing that would be impossible for the corporation for profit. The day may come, when the cost of industrial

accidents is taken care of through the general tax levy; but that day is far off.

In building up the new jurisprudence, called for by the abandonment of the old errors, one prayer should go up to the courts: In adjudicating, remember the old and only proper rule for courts in deciding law points: Fiat justitia, pereat mundus. Man is ingenious; he will know how to take care of himself, and the courts should never indulge in sophistry for the purpose of saving him.

One more plea: Would it be impossible to agree, in legal phraseology to discard "Master and Servant," and to substitute "Employer and Employed?"

AXEL TEISEN.

Philadelphia, Pa.

PARTNERSHIP-DISSOLUTION.

HORNADAY v. COWGILL et al.

Appellate Court of Indiana, Division No. 1. May 29, 1913.

101 N. E. 1030.

The death of a member of a partnership effected a dissolution of the firm, notwithstanding partnership articles provided that the firm should continue for 20 years regardless of the death of a partner, so that any business transacted after the death of such partner was with a new firm, and any partner who had retired from the business prior thereto could not be held for subsequent obligations of the firm.

SHEA, J. Action by appellant in assumpsit for the balance of deposits made by him, in the Bank of North Manchester.

An amended complaint in two paragraphs was filed. The first alleged, in substance: That appellant was a depositor in the Bank of North Manchester, a copartnership, consisting of D. W. Kirsher, Carey E. Cowgill, Harvey B. Shively, Dayton C. Harter, J. B. Harter, Jacob Harter, Jennie C. Lawrence, Elizabeth H. Mills and August C. Mills, guardian of George W. Lawrence (all of whom were made defendants), organized November 3, 1894, under articles of agreement the material provisions of which are as follows: "(1) The capital stock of this partnership shall be limited to the sum of twenty-five thousand ($25,000) dollars, which for convenience, shall be divided into shares of one hundred ($100) dolars each; and each of the undersigned partners do hereby subscribe for the number of shares and for the sums of money, respectively set opposite our names, such sums to be paid as is provided elsewhere herein. (2) Such partnership shall begin November 3, 1894, and shall continue for the term of time of twenty (20) years thereafter. * * * (4) For convenience in the transaction of the business of said partnership, there shall be elected from among the partners, a president and cashier. The duties to be performed by such officers shall be those usually incident to the offices which they occupy respectively, in the business of banking. (5) Before the opening of business such officers shall be chosen by a meeting of the partners, and when so chosen, shall serve until the first Wednesday of July, 1895. And thereafter, on the first Wednesdays respectively, of January and July of each year, during the continuance of said partnership, a meeting of the partners shall be held at the partnership's place of business, at which their successors shall be elected for the ensuing semiannual term. All officers shal serve without compensation other than is specially provided for, and until their respective successors shall have been elected and qualified, according to such rules as may be adopted. * * * (8) It is further agreed that if any member of this firm shall desire to withdraw he or she shall first ask permission to do so, of all the partners, and then may do so, upon such terms as they may agree upon, and not otherwise. (9) Any partner desiring to sell all or any part of his interest, shall first give the refusal thereof, to the remaining partners, and it shall be their privilege to take the same pro rata with the previous holdings. In no case shall any partner be permitted to sell any part of his interest to an outsider, until he shall ascertain in good faith that the remaining members of the firm will not pay as much as can be obtained elsewhere, and that no member of the firm will do so. (10) It is expressly agreed that in case of the death of any member of the firm, the law in relation to surviving partners is waived, and that the business shall be carried on the same as if such death had not occurred, until the expiration of the term of partnership, and no part of the capital shall be withdrawn by any administrator, executor, heirs, or legatees, or other personal representative; provided, that should such interest of the decedent be required to pay his

debts, in course of lawful administration, then there shall be a withdrawal only, and upon such terms as the remaining members of the firm, and such administrator, executor, heirs, legatees, and personal representative may agree upon, of such capital, with profits already accrued, over and above ascertained and probable losses, but in no case shall there be a sale of such stock." That on June 11, 1904, said bank failed, and appellant had deposited at that time $2,600, 51 per cent of which has been repaid, leaving due and owing him a balance of $1,378 and interest from said date. That D. W. Kirscher, who signed the articles of agreement (hereafter referred to as the contract), died previous to the commencement of this suit, leaving no estate, and is not made a party to the action. That Jacob W. Harter died since the commencement of this suit, and Katherine Harter, his administratrix, is made a party. That Harvey B. Shively died since this suit was commenced, and Catherine Shively, his executrix, is made a party. * * * *

Judgment was rendered on the findings and conclusions that appellant take nothing as to Cowgill and Shively, and $1,670 as against the other defendants, and appellant's motion for a new trial was overruled. * * * *

Subsequent to the retirement from the firm of appellees, the death of Jenne C. Lawrence, who was also a member of the partnership, occurred. We think it is clearly settled that this death in the partnership brought about its dissolution, and any business transacted thereafter was with an entirely new firm, and that any partner who had retired from the business prior thereto could not be held for subsequent debts and obligations, notwithstanding the provisions in the written agreement that there should be a continuation of the firm or partnership for a period of 20 years.

In the case of Andrews v. Stinson, 254 Ill. 111, N. E. 222, Ann. Cas. 1913B, 927, the court said: "Where there are provisions in the articles of agreement or will for the continuance of the business after the death of one of the partners, it is sometimes inaccurately said that the death of the partner does not dissolve the partnership. If the business is carried on after the death of the partner under such arrangement or by the agreement of the heirs or personal representatives of the deceased, there is, in effect and in law, a new partnership, of which the survivors and the executors or heirs are the members, the new members becoming liable, as the old, to the creditors of the firm. (Citing authorities.) A reference to the authorities will disclose that, while the above rule of law is not followed in some jurisdictions, the weight of authority, as well as sound reason, is in accord therewith."

In the case of Karrick v. Hannaman, 168 U. S. 328, 334, 18 Sup. Ct. 135, 138 (42 L. Ed. 484), the court uses this language: "A contract of partnership is one by which two or more persons agree to carry on a business for their common benefit; each contributing property or services, and having a community of interest in the profits. It is in effect a contract of mutual agency; each partner acting as a principal in his own behalf as agent for his copartner. Meehan v. Valentine, 145 U. S. 611 (12 Sup. Ct. 872, 36 L. Ed. 835). Every partnership creates a personal relation between the partners, rests upon their mutual consent, and exists between them only. Without their agreement or approval, no third person can become a member of the partnership, either by act of a single partner, or by operation of law; and the death or bankruptcy of a partner dissolves the partnership. 3 Kent, Com. 25, 55, 58; Wilkins v. Davis, 2 Lowell, 511 (Fed. Cas. No. 17,644). So an absolute assignment by one partner of all his interest in the partnership to a stranger dissolves the partnership, although it does not make the assignee a tenant in common with the other partners in the partnership property. Bank v. Carrolton Railroad, 11 Wall. 624, 628 (20 L. Ed. 82); Marquand v. New York Mfg. Co., 17 Johns. (N. Y.) 525, 528, 535." Parsons on Partnership (4th Ed.) §§ 342, 343; Stewart v. Robinson, 115 N. Y. 328, 22 N. E. 160, 163, 5 L. R. A. 410; Stanwood v. Owen, Adm'r, 14 Gray (Mass.) 195; Wilcox v. Derickson, 168 Pa. 331, 31 Atl. 1080; Marlett v. Jackman, 3 Allen (Mass.) 287, 290.

The cases of Gilmore v. Merritt, 62 Ind. 525; Bisel v. Hobbs; 6 Blackf. 379; Tomlinson v. Collett, 3 Blackf. 436; Uhl v. Harvey, 78 Ind. 26; Elverson v. Leeds, 97 Ind. 336, 49 Am. Rep. 458; and Rand, Receiver, v. Wright et al., 141 Ind. 226, 233, 39 N. E. 447—cited by appellant from the Supreme Court of Indiana, are easily distinguishable in their facts from the case at bar. The doctrine of Lord Eldon that death works dissolution of the partnership, unless otherwise provided, is urged by appellant as being particularly applicable to this case, since the contract provided that the partnership should continue for a period of 20 years. The case of Rand, Receiver, v. Wright et al., supra, is cited in support of this doctrine. The case

contains some expressions which seem to indicate approval of the doctrine of Lord Eldon. An examination of the case, however, discloses that the court did not apply the doctrine, and the expressions relied on are mere dicta, and cannot, therefore, be said to have given it approval.

It is earnestly contended by appellant that, because the name under which this partnership transacted its business was suitable for a corporation, it would change the status of the parties. The authorities, however, are clear that a partnership has a right to adopt any name, and the use of a name suitable to a corporation does not affect the law governing partnerships. Carico v. Moore, 4 Ind. App. 20, 29 N. E. 928; Hollbrook v. St. Paul, etc., Ins. C., 25 Minn. 229; Crawford v. Collins, 45 Barb. (N. Y.) 269; Carter v. Whalley, supra.

The following propositions may be deduced from the weight of authority: (1) A dormant partner whose connection with the firm is not discovered can only be held for liabilities incurred during the period of his connection with the partnership. (2) A dormant partner may retire from the partnership without notice, and escape future liability. (3) The death of a partner ipso facto works a dissolution of a partnership, notwithstanding an agreement entered into between the partners that the partnership should continue for a specified term of years.

It follows therefore that the court did not err in its conclusions of law upon the facts found.

We find no available error in the record. Judgment affirmed.

NOTE.—*Stipulation in Partnership Agreement for Continuance of Business After Partner's Death.*—The instant case appears to go on a very narrow point, i. e., the retiring partner, who failed to take the proper steps to get out of the firm, has his failure cured by the death of another partner, notwithstanding that there is a stipulation for continuance of the firm. This stipulation does appear to have some effect and it seems to us that where it fails to have effect to continue the firm perfectly, this was known to all and agreed to by all. Whatever may be said about a will, it does seem true that a decedent's estate had already been accepted as a *quasi* partner and the new firm theory is not tenable.

In Hawkins v. Quinette, 156 Mo. App. 153, 136 S. W. 246, the St. Louis Court of Appeals, there was both a provision in the partnership articles and by will of deceased partner that the partnership should continue until a certain date. The court said: "It is entirely clear that the copartnership was not dissolved; for, though it be true that a mere direction in the will of one partner that the partnership shall continue after his death amounts to no more than the creation of a new partnership upon the taking effect of the will on the theory that the surviving partners do not assent thereto until that time, as was decided in Exchange Bank v. Tracy, 77 Mo. 594, it is true as well that an existing partnership continues after the death of a member until the termination prescribed, if it is so stipulated in terms in the contract of partnership. So it is, though death ordinarily operates a dissolution of a partnership, it accomplishes naught with respect to that matter in cases such as this one where, by express stipulation in the articles of co-partnership, the partners have agreed the partnership shall continue. Edwards v. Thomas, 66 Mo. 468; Farmers' & Traders' Sav. etc., v. Garesche, 12 Mo. App. 584; Hox v. Burnes, 98 Mo. App. 707, 73 S. W. 928." The Edwards case cites Coll. on Part., §§ 601, 603; Sto. on Part., §§ 5, 195, 196, 199 and cases cited.

The case of Andrews v. Stinson, referred to in the instant case, reverses Illinois Court of Appeals, but the opinion in that court cites no authority whatever. S. C. 164 Ill. App. 25.

It is said in note in Ann. Cas. 1913, B. p. 933, that this case, as decided by Illinois Sup. Court, is sustained in practically every case in which the question has been directly involved, and several cases are cited. Some of these, however, relate entirely to testamentary provisions. Thus in McGrath v. Cowen, 57 Ohio St. 385; 49 N. E. 338, the partnership was by verbal contract and at sufferance and by will, executrix of deceased partner was authorized to continue same. In Pemberton v. Oakes, 4 Russ. 154, 6 L. J. Ch. 35, 4 Eng. Ch. 154, the articles provided that a member could, by will, provide for continuance of his interest after his death. One partner dying did, by will, so provide, it was held there was a new partnership. In Mattison v. Farnham, 44 Minn. 95, 46 N. W. 347, the power of continuance was by provision in a will. And so in Insley v. Shire, 54 Kan. 793, 39 Pac. 713, 45 Am. St. Rep. 308.

In Vincent v. Martin, 79 Ala. 540, there was a stipulation in the articles that "the surviving partner shall continue the business for the unexpired term." The court said: "It is clear that partners can make a valid and binding agreement, that in the event of the death of one or more of the members of the firm, the business shall be continued by the survivor, employing for the purpose the united capital which had constituted the partnership effects. That is precisely what we think the contract of partnership in this case contemplated. The result of such agreement and direction is, that the survivor can fasten no new debt or liability on the estate of the partner not carried previously into the adventure as part of the stock. He can use only the partnership effects as they were in the firm when his co-partner died. Over these, however, his control is unlimited." This seems to us pretty good authority against the ruling in the Andrews and instant cases, instead of on their side as cited.

In Wilcox v. Derickson, 168 Pa. St. 331, 31 Atl. 1080, it is held that it is not strictly correct to say that there is no dissolution by death, if partners agree that the business is to be continued, notwithstanding death, but it is correct to say that the usual consequences of dissolution may be avoided by suitable provisions in the partnership agreement, and in such case the part of his estate invested in the partnership venture will be in the hands of surviving partners clogged

with the liabilities placed upon it by decedent in his lifetime. Here is nothing said about a new partnership at all. It continues to run exactly as the old one, except there is no responsibility over and beyond what has been already invested, while had decedent continued to live there would be liability as to his entire estate. C.

BOOKS RECEIVED

Federal Incorporation, Constitutional Questions Involved, by Roland Carlisle Heisler, Gowen Memorial Fellow in the law school of the University of Pennsylvania. Price, $3.50. Boston, Mass. Boston Book Company. Review will follow.

Kelley's Probate Guide, a treatise on law relating to the Powers, Duties, Rights and Liabilities of the Executors, Administrators and Guardians, by Henry S. Kelley, author of Kelley's Criminal Law and Practice and Kelley's Justice Treatise. Fourth Edition, by Wm. P. Borland and John B. Gage, of the Kansas City Bar. Price, $6.00. Kansas City, Mo. Vernon Law Book Company. Review will follow.

The Organization and Management of Business Corporations, by Walter C. Clephane, LL. M., of the Bar of the Supreme Court of the United States; Professor of the Law of Organization and Management of Corporations in the George Washington University of Washington, D. C., 2nd Edition. Price, $5.00. Kansas City, Mo. Vernon Law Book Company. Review will follow.

BOOK REVIEWS.

MISSOURI DIGEST, VOLS. 14 AND 15.

The digest of decisions for Missouri by the West Publishing Company, has reached its double number of 14 and 15, as one in the series, that is to say the former runs alphabetically from "Abandonment" to "Judges" and the latter from "Judgment" to "Year."

The plan adopted is the key-number with annotations to the Century Digest, the Cyclopedia of Law and Procedure, the Lawyers' Reports Annotated, the American Decisions, the American Reports and the American State Reports.

The compilation is under the American Digest classification, and thus when this particular digest speaks, the lightning of the law leaps from peak to peak in a range, and no longer creeps through a jungle of confusion.

We are not advised as to the number of states the West people separately treat as they do Missouri. The more, however, that they do, the more do they exemplify how they make scientific drafts on the never-failing general source of supply, thus enriching both the giver and the taker in public favor and esteem.

Volumes 14 and 15 of Missouri Digest embrace volumes 113-141 Southwestern Reporter, which cover of that state's official reports 215-237 Supreme Court and part of volume 214, and 134-159 Missouri Appeals Courts and parts of volumes 133 and 160, coming down to January, 1912.

All of us know what the American Digest classification is and we flatter ourselves, that this Journal hardly will come to the notice of any practitioner who does not. If we are mistaken, however, we would recommend that he "get on to it."

These volumes are in the usual excellent style in type and general make-up and in the usual binding of law buckram, all from the house of West Publishing Co., St. Paul, Minn., 1912.

CULBERTSON'S MEDICAL MEN AND THE LAW

Emmett Culbertson of Ohio and New York bars, a contributing editor to the Lansing Ohio Encyclopedic Digest, and other legal publications. The hope is expressed in the author's brief preface that "the book may be useful to physicians and surgeons, and that it may not be unacceptable to many lawyers."

The work treats of the relation of physician to patient, compensation, and parties liable therefor, malpractice and negligence, criminal liability of physicians and surgeons, the same as witnesses, their right to protect professional reputation, and gives directions about execution of wills. It also tells of regulations regarding the licensing of practitioners, and of their revocation for unprofessional conduct.

While the book is primarily for information to physicians and surgeons, yet it contains some discussion of legal principles and citation of authority.

The volume is printed in type larger than usual, making it very readable, and its finish is pleasing in appearance. It is bound in dark green cloth and issues from Lea & Febiger, Philadelphia and New York, 1913.

HUMOR OF THE LAW.

The Secretary of the Bar Association was very busy and rather cross. The telephone rang.

"Well, what is it?" he snapped.

"Is that the city gas works?" said a woman's soft voice.

"No, madam," roared the Secretary, "this is the San Francisco Bar Association."

"Ah," she answered in the sweetest of tones, "I didn't miss it so far, after all, did I?"

One summer a well-known solicitor went with his family to a small seaside resort on the east coast, and boarded with a farmer who was in the habit of taking boarders. The next year he wrote to the farmer, and in his letter said: "There are several small matters that I desire changed should I decide to pass my holidays at your house. We don't like Mary; moreover, we don't think a sty so near the house is sanitary."

The farmer replied: "Mary is went, and we 'aven't 'ad no 'ogs since you went away last August."—London Tribune.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Assignments**—Breach of Contract. — A claim for damages for breach of contract binding a party thereto to pay the debts of the adverse party within a reasonable time is assignable.—Hyland v. Crofut, Conn., 86 Atl. 753.

2. **Bankruptcy**—Insurance.—Policies of life insurance on the life of a bankrupt which do not have a cash surrender value at the time of the bankruptcy, available as a cash asset, do not pass to the trustee in bankruptcy.—Burlingham v. Crouse, 33 Sup. Ct. Rep. 564.

3.——Insurance.—The right of a bankrupt to pay the trustee the cash surrender value of insurance policies and to hold them free from the claims of creditors was not extinguished by his death after filing the petition and before adjudication, and the right may be exercised by his executors.—Andrews v. Partridge, 33 Sup. Ct. Rep. 570.

4.——Insurance.—The time when the petition in bankruptcy is filed fixes the cash surrender value of insurance policies, so that the death of the bankrupt between the filing of the petition and the adjudication does not make the proceeds of the policies above the cash surrender value assets in the hands of the trustee. —Everett v. Judson, 33 Sup. Ct. Rep. 568.

5.——Trustee.—A trustee in bankruptcy holds not only the legal title to the bankrupt's estate, but he also represents the creditors of the bankrupt, and has such rights as the creditors possessed, and he can avoid any transfer which the creditors could have avoided, and the trustee has plenary power to take all steps necessary to subject the bankrupt's property to the satisfaction of his debts.—Benner v. Scandinavian American Bank, Wash., 131 Pac. 1149.

6. **Banks and Banking**—Dishonoring Check.—A depositor, suing a bank on an implied contract for its wrongful refusal to pay checks, when he had on deposit funds to meet them when presented, may recover damages for injury to his credit.—Levine vs. State Bank, 141 N. Y. Supp. 596.

7.——Stockholder.—Stockholder of national bank held not entitled to recover from former receiver for misconduct for the benefit of the bank, its stockholders or creditors, where no demand on the board of directors, the receiver in charge, or the comptroller of the currency to bring such action was shown.—Moss v. Goodhart, Mont., 131 Pac. 1071.

8. **Bills and Notes**—Attorney Fee.—Where a note provided that the maker would pay such attorney's fees as the court adjudged to be reasonable, and where no attorney's fee was allowed in the first action to recover installments due, the allowance of one attorney's fee in a subsequent action to recover installments subsequently due was proper.—Davis v. Hibbs, Wash., 131 Pac. 1135.

9.——Presumption.—Where a note executed in this state is payable at a bank named, whose location is not stated, the bank will be presumed to be in this state.—Union Trust Co. v. Adams, Ind., 101 N. E. 741.

10. **Boundaries**—Prescription. — Where a grantor of a part of his land and the grantee located the boundary line which was not definitely fixed by the deed, and the line so located was recognized for 40 years as the true line, and the premises were improved and used up to the line by each owner, it became the true line.—Rosenmaier v. Mahrenholz, Ind., 101 N. E. 721.

11. **Breach of Marriage Promise**—Offer of Performance.—Defendant having renounced his promise to marry plaintiff and ceased his attentions to her, she was not required to offer performance as a condition to right to sue for breach of promise.—Lemke v. Franzenburg, Iowa, 141 N. W. 332.

12. **Brokers**—Fraud.—Where an agent employed to sell real estate purchased the land with his own money without the knowledge of the owner, and obtained a deed containing a blank for the grantee, and thereafter inserted the name of his wife, he and his wife held the legal title in trust for the owner, who could recover profits on a resale.—Sawyer v. Issenhuth, S. D., 141 N. W. 378.

13. **Burglary**—Dwelling House.—A jewelry store, a portion of which was curtained off as a sleeping apartment, held not a private residence within the statute, which distinguishes between ordinary burglary and the offense of breaking into a private residence.—Shornweber v. State, Tex., 156 S. W. 222.

14. **Cancellation of Instruments**—Executory Contract.—An action will lie to cancel an executory contract to exchange property and a

deed executed pursuant thereto, when the execution of the contract and possession of the deed have been procured through fraud.—Sneve v. Schwartz, N. D., 141 N. W. 348.

15. **Carriers of Goods**—Conversion.—Where a terminal carrier of an interstate shipment, through a mistake as to the rate, refused to deliver the goods until an excessive rate was paid, the refusal amounted to a conversion.—Pecos & N. T. Ry. Co. v. Porter, Tex., 156 S. W. 267.

16.——Discrimination.—A carrier must exercise reasonable diligence to furnish cars adequate for the transportation of freight, and not discriminate in favor of one shipper when the demand exceeds the capacity of the carrier and the anticipated and ordinary calls on it.—Dobbins v. Syracuse, B. & N. Y. R. Co., 141 N. Y. Supp. 637.

17.——Rate Schedules.—An interstate shipper is liable to pay the freight fixed by printed and published schedules of the initial carrier on file with the Interstate Commerce Commission, notwithstanding any stipulations in the bill of lading to the contrary.—Yorke Furniture Co. v. Southern Ry. Co., N. C., 78 S. E. 67.

18.——Waiver.—Where a carrier prior to the institution of a suit for damages did not refuse payment because notice was not given within 90 days, as required by the contract of shipment, and made no objection to the form or contents of a notice given to a connecting carrier, it waived that provision of the contract.—Chicago, R. I. & G. Ry. Co. v. Linger, Tex., 156 S. W. 298.

19. **Carriers of Live Stock**—Joint Liability.—If negligence be charged against all carriers engaged in carrying live stock, they may be sued jointly or severally, though there be no privity between them.—Wabash R. Co. v. Priddy, Ind., 101 N. E. 724.

20.——28-Hour Law.—Where a connecting carrier having violated the Twenty-Eight Hour Law, delivered the confined horses to defendant terminal carrier, which, with knowledge of such violation, did not transport the car to destination as quickly as possible, a judgment for a penalty recovered against the connecting carrier was no bar to a recovery against defendant.—New York Cent. & H. R. R. Co. v. United States, C. C. A., 203 Fed. 953.

21. **Carriers of Passengers**—Free Pass.—A carrier cannot defeat a recovery of damages by a passenger by showing the use of a pass at the time of the injury, though the acceptance of the pass was on condition that all claims for damages should be waived.—Memphis D. & G. R. Co. v. Steel, Ark., 156 S. W. 182.

22.——Proximate Cause.—Where a passenger was thrown from the train as it passed his station, the breach of the carrier's contract to stop was not the proximate cause of the accident, and hence no recovery could be had without proof of an allegation that intestate was thrown from the train by a sudden jerk as he went to the platform prepared to alight.—Boston & M. R. Co. v. Miller, C. C. A., 203 Fed. 968.

23.——Station Grounds.—A railroad company is entitled to perpetually enjoin lunch vendors from going upon its depot platform or upon its right of way at, or adjacent to, its passenger station, as well as from going upon its passenger coaches, to sell articles of food.—Ft. Worth & D. C. Ry. Co. v. White, Tex., 156 S. W. 241.

24. **Chattel Mortgage**—Payment.—A chattel mortgage being but an incident of the debt, the payment of the debt for which it was given extinguishes the mortgage.—American Type Founder Co. v. First Nat. Bank, Tex., 156 S. W. 300.

25. **Contracts**—Forbearance.—While forbearance is a good consideration for a contract, it must be under an agreement to forbear; mere forbearance, without an agreement, being insufficient.—In re Thomson's Estate, Cal., 131 Pac. 1045.

26.——Waiver.—Strict performance of a contract required by law to be in writing may be waived by parol.—Studdard v. Hawkins, Ga., 78 S. E. 116.

27. **Corporations**—Charter Powers.—A corporation organized to conduct the business of buying and selling automobiles and automobile supplies may for the transaction of its business borrow money and give security therefor.—American Nat. Bank v. Wheeler-Adams Auto Co., S. D., 141 N. W. 396.

28.——Fraud.—Directors, who organize a corporation, knowing that attempts are being made to induce subscriptions to its capital, are liable for misrepresentations in circulars issued to the public, and cannot escape such liability by claiming ignorance of the same.—Rives v. Bartlett, 141 N. Y. Supp. 561.

29.——Insolvency.—A domestic corporation may not after insolvency prefer its creditors.—Benner v. Scandinavian American Bank, Wash., 131 Pac. 1149.

30.——Stock.—A share of corporate stock is the right which the shareholder has to participate, according to the number of shares, in the surplus profits of the corporation on a division, and in the assets, after payment of debts, on its dissolution.—United States Radiator Corporation v. State, N. Y., 101 N. E. 783.

31. **Covenants**—Burden of Proof.—The plaintiff in an action on a general warranty must prove an eviction or equivalent disturbance by an outstanding paramount title.—Brooks v. Winkles, Ga., 78 S. E. 129.

32. **Criminal Evidence**—Accomplice.—At common law the rule that the jury should not convict on the unsupported testimony of an accomplice was one of practice, and a conviction on such evidence could not be quashed as illegal; the better practice being for the judge to advise the jury to acquit unless the accomplice's testimony be corroborated as to accused participation.—Commonwealth v. Barton, Ky., 156 S. W. 113.

33.——Circumstantial Evidence.—The testimony of a witness, who had measured tracks and the shoes of accused that they were of the same length, was admissible to connect accused with the crime charged.—Wilson v. State, Tex., 156 S. W. 204.

34. **Criminal Law**—Intoxicating Liquor.—Where accused, keeping whisky for sale in a local option county, agreed with a buyer there to sell him a specified amount, and then put the whisky into jugs, and took it across a river into an adjoining county, and there delivered it to the buyer, who then paid the price, the sale was in the local option county.—Duff v. Commonwealth, Ky., 156 S. W. 150.

35. **Damages**—Contemplated.—In an action for personal injuries, any injury shown by the evidence to be a natural consequence of that pleaded, and, while not a necessary consequence, a usual one that could reasonably be expected to follow from the injuries alleged, may be proved.—Cooley v. Kansas City Elevated Ry. Co., Mo., 156 S. W. 54.

36. **Death**—Parent and Child.—A child is entitled to recover damages for the loss of the parent's care, guidance, training, and education, considered from a pecuniary as well as from a moral standpoint.—Gentry v. Wabash R. Co., Mo., 156 S. W. 27.

37. **Deeds**—Undue Influence.—A deed will not be set aside as having been obtained by undue influence merely because of mental weakness of the grantor, unless it is shown that his will was overpowered.—Nixon v. Klise, Iowa, 141 N. W. 322.

38. **Druggists**—Negligence.—A retail druggist who sells a medicine containing a poison in place of an alleged harmless drug is liable only when he fails to use the highest practical degree of care consistent with the reasonable

conduct of the business.—Willson v. Faxon, Williams & Faxon, N. Y., 101 N. E. 799.

39. **Equity**—Laches.—Ten years' delay on the part of a nonassenting, unsecured creditor of an insolvent corporation before attacking a reorganization plan, held not such laches as bars a suit where the corporations and their stockholders were not prejudiced thereby, and the delay was in spite of the creditor's diligent effort to reduce his claim to judgment that he might proceed in equity, which was accomplished only after protracted litigation.—Northern Pac. R. Co. v. Boyd, 33 Sup. Ct. Rep. 554.

40.——Specific Relief.—When a defendant disenables himself pending suit in equity to comply with an order for specific relief, the court will proceed to afford relief by way of compelling compensation to be made.—Barz v. Sawyer, Iowa, 141 N. W. 319.

41. **Estoppel**—First Deed.—The trustee in a deed of trust is under no obligation to defend the title of the grantor, and not estopped from purchasing a title adverse to that of the purchaser on foreclosure.—W. D. Cleveland & Sons v. Smith, Tex., 156 S. W. 247.

42.——Warranty.—A warranty in a deed only binds the grantor's heirs to the extent of the property received by them from the grantor's estate, and it being insolvent the heirs are not estopped to acquire a title adverse to that conveyed by their ancestor.—W. D. Cleveland & Sons v. Smith, Tex., 156 S. W. 247.

43. **Evidence**—X-ray Picture.—The rule that an ordinary photograph is the best evidence of what it contains will not be applied to X-ray pictures, and the opinion of experts as to what they contain is the best evidence.—Marion v. B. G. Coon Const. Co., 141 N. Y. Supp. 647.

44. **Executors and Administrators**—Probate.—The administration of an estate under the probate jurisdiction of the court is a proceeding in rem, and, while the court need not have jurisdiction of the persons of the heirs, it is essential that constructive notice to them be given as prescribed by law.—Carter v. Frahm, S. D., 141 N. W. 370.

45. **False Imprisonment**—Probable Cause.—An illegal arrest and imprisonment will sustain an action for false imprisonment, regardless of the existence of probable cause.—Williamson v. Glen Alum Coal Co., W. Va., 78 S. E. 94.

46. **Fraud**—Reliance on Representation.—Where the false and material representations of the seller of a creamery were not open and obvious, and could have been discovered only by considerable time and research, the buyer was entitled as a matter of law to rely thereon, and could recover damages as for deceit.—Baker v. Becker, Wis., 141 N. W. 304.

47. **Frauds, Statute of**—Parol License.—While the statute of frauds prevents the creation by parol of an irrevocable license with respect to real property, yet where there has been a parol license under a definite contract, with performance on one side, such part performance takes the case out of the statute and equity will enforce the licensee's rights in case of attempted revocation.—Chicago, R. I. & G. Ry. Co. v. Johnson, Tex., 156 S. W. 253.

48. **Game**—Police Power.—The Legislature may make it unlawful to expose for sale game within the closed season, whether killed within or without the state, and may prohibit the sale or exposing for sale at any time game killed within the state.—Phoenix Hotel Co. v. Commonwealth, Ky., 156 S. W. 117.

49. **Garnishment**—Negotiable Note.—A garnishee is not liable on a negotiable note before maturity, but he is liable thereon after maturity where his answer is filed after maturity and the debtor is the owner of the note though the writ was issued before maturity.—Thomson v. Findlater Hardware Co., Tex., 156 S. W. 301.

50. **Guaranty**—Consideration.—A contract of guaranty, which was not made concurrently with the original obligation, must be supported by an additional consideration.—In re Thomson's Estate, Cal., 131 Pac. 1045.

51. **Homicide** — Communicated Threats.—Where insulting conduct and language used by deceased with reference to defendant's wife and sister had been communicated to defendant, grossly insulting remarks by deceased referring to them, not communicated to defendant, were admissible to corroborate the communicated insults.—Walker v. State, Tex., 156 S. W. 206.

52.——Unlawful Arrest.—Where officers surrounded in the nighttime the house of accused and began shooting into the house immediately on demanding his surrender, and the evidence was conflicting as to whether the officers or accused and his associates first began the shooting, accused and an associate on trial for assault with intent to murder an officer were entitled to instruction on the law of illegal arrest.—Sanchez v. State, Tex., 156 S. W. 218.

53. **Husband and Wife**—Joint Interest.—Where a husband and wife purchased real estate for a home and with the understanding that both should contribute to pay for it, and both contributed their labor and money, the husband's right to control the property, the legal title to which was in the wife, was subject to her occupancy and enjoyment thereof.—Alfred v. Alfred, Vt., 86 Atl. 749.

54.——Separate Property.—Proof that a husband caused a conveyance to be taken in his wife's name tends to show that it was the intention of the parties that the property should be her separate property, and this is true whether the consideration was paid from her separate property or from the community.—Emery v. Barfield, Tex., 156 S. W. 311.

55. **Infants**—Disaffirmance.—An infant who purchased land giving negotiable notes in payment held not entitled to take in preference to a superior outstanding title, for he could protect himself by disaffirming his contract and the notes.—Nellius v. Thompson Bros. Lumber Co., Tex., 156 S. W. 259.

56.——Disaffirmance.—Where an infant having contracted to purchase a share of defendant's stock, notified defendant that he elected to disaffirm, because he was dissatisfied with defendant's management, such notice constituted a sufficient disaffirmance.—Danziger v. Iron Clad Realty & Trading Co., 141 N. Y. Supp. 593.

57.——Estoppel.—An infant representing himself to be of age, and thus securing the price of property conveyed by him, is estopped to set up his infancy against the purchaser, who was misled, where the contract was fairly made and the consideration adequate.—Goff v. Murphy, Ky., 156 S. W. 95.

58. **Insurance**—Cancellation.—Insurance policy held not canceled by letter written insured, stating that the company wanted to cancel it and asking where the policy was, because it was a mere expression of an intention to cancel.—Payne v. President, etc., of Ins. Co. of North America, Mo., 156 S. W. 52.

59.——Contract.—Where the minds of an owner and of an insurance agent never met as to the identity of the house to be insured, held that the agreement which was an essential element of the contract was wanting, so that there was no contract or liability.—Dixie Fire Ins. Co. v. Wallace, Ky., 156 S. W. 140.

60.——Estoppel.—Where a fraternal insurance order issued a certificate to a local lodge for the benefit of a member on condition that he should not be received or retained in violation of the laws of the order, that the local lodge knew of the violations, but accepted dues and assessments, did not estop the order from relying on a forfeiture of the certificate.—National Council Junior Order United American Mechanics v. Thompson, Ky., 156 S. W. 132.

61.——Estoppel.—Where an agent of an insurance company knew, when he solicited fire insurance and delivered a policy, that insured had no iron safe and would not procure one, and accepted the premium without objection, a forfeiture for violation of the iron-safe clause was waived.—Weinberger v. Insurance Co. of North America, Mo., 156 S. W. 79.

62.——Forfeiture.—Where it was clear that a tender of the legal dues would have been refused by the insurer unless accompanied by the

amount of an illegal assessment, it was not necessary that insured tender such dues in order to prevent a forfeiture of his policy.—Ibs v. Hartford Life Ins. Co., Minn., 141 N. W. 289.

63.——Misrepresentation.—The beneficiary of one who falsely represented that he was only 42 years of age when he applied for membership in a fraternal benefit society when in fact he was 46 years, so as to be ineligible to membership, could not recover on the certificate; the constitution providing that the beneficiaries of a member who has fulfilled his obligation and made no false statement on his admission shall receive a death benefit.—Waltz v. Workmen's Sick and Death Benefit Fund of the United States of America, 141 N. Y. Supp. 578.

64.——Place of Contract.—Where insured resides and the policy is signed, delivered, and the premiums paid in Oklahoma, it is governed by the laws of Oklahoma, though the insurer is a foreign corporation and the policy was executed at its home office.—Continental Casualty Co. v. Owen, Okla., 131 Pac. 1084.

65.——Public Policy.—A contract insuring an individual against damages for personal injuries caused by his own negligence is valid.—Westinghouse-Church-Kerr Co. v. Long Island R. Co., 141 N. Y. Supp. 644.

66.——Waiver.—A stipulation in a policy that no agent may waive any condition therein unless by written indorsement thereon does not apply after a loss, and an adjuster may waive the proof of loss required by the policy.—Ohio Farmers' Ins. Co. v. Glaze, Ind., 101 N. E. 734.

67.——Waiver.—The doctrine of waiver and estoppel, as applied to the forfeiture of insurance contracts, does not grow out of the original agreement, but out of a new contract, arising from the conduct of the parties not to insist upon the forfeiture; and although there is no formal waiver, the courts will not allow a party to claim a forfeiture in violation of good faith and good conscience.—Independent Order of Foresters v. Cunningham, Tenn., 156 S. W. 192.

68. **Judgment**—Collateral Attack.—Where the facts on which a court assumes jurisdiction are recited in the record and appear to have been such as would not in law confer jurisdiction, the judgment may be impeached collaterally.—Carter v. Frahm, S. D., 141 N. W. 370.

69. **Landlord and Tenant**—Eviction.—Under a lease of premises for a lodging house, held, that the lessor's construction and lease of a garage on his adjoining property, so that the noise, smells, and smoke therefrom interfered with the quiet and profitable enjoyment of such house, was tantamount to an eviction justifying its tenant in quitting the premises.—Blaustein v. Pincus, Mont., 131 Pac. 1064.

70.——Repairs.—A landlord, though under no obligation to make repairs, is nevertheless liable for injuries caused by his own negligence, or that of his servants, in making them voluntarily.—Fulmele v. Forrest, Del., 86 Atl. 733.

71. **Malicious Prosecution**—Pleading.—A petition, in an action for malicious prosecution, which does not allege want of probable cause is fatally defective.—Madden v. Meehan, Ky., 156 S. W. 116.

72. **Master and Servant**—Assumption of Risk.—An employe engaged at work on the side of a mountain in making a cut does not assume dangers not incident to the work, and does not assume risks resulting from the master's negligence in failing to protect him from workmen above him.—Feroglio v. Paulsen, Wash., 131 Pac. 1163.

73.——Assumption of Risk.—An employe's assumption of the risks ordinarily incident to the service does not relieve the employer from using reasonable care in furnishing competent servants, reasonably safe appliances, and a reasonably safe place in which to work, as well as reasonable care to prevent injuries to the employe.—Finding v. Gitzen, Colo., 131 Pac. 1042.

74.——Assumption of Risk.—An employe in the bottom of a tank adjusting timbers lowered to him does not assume the risk of injury by falling timbers where he may not perform his duties, and at the same time see to the lowering of the timbers.—United Iron Works Co. v. Bowling, Ky., 156 S. W. 124.

75.——Master's Assurance.—Where a servant calls the master's attention to a defect in a machine which he is operating, and the master undertakes to repair it and informs the servant he has done so, directing him to use it, the servant is under no duty to inspect.—Hughes-Buie Co. v. Mendoza, Tex., 156 S. W. 328.

76.——Master's Duty.—An employer owes the duty of supervision commensurate with the hazardous character of the work; and, where he knows or by reasonable care ought to know that the work is being done so as to unnecessarily increase the hazards, he may be negligent for allowing the unsafe method to continue.—Mahoney v. Cayuga Lake Cement Co., N. Y., 101 N. E. 802.

77.——Master's Duty.—A master's liability to adopt a reasonably safe and practical method of work includes the duty to provide a sufficient number of men therefor.—Judson & Little v. Tucker, Tex., 156 S. W. 225.

78.——Safe Appliances.—That an employe is to a certain extent directing the work does not impose the entire responsibility for the accident on him, and lessen the duty of the employer to provide safe appliances.—Kelly-Atkinson Const. Co. v. Lawrence, Ind., 101 N. E. 740.

79.——Safe Place.—A master being bound to furnish a servant a safe place to work is equally bound to refrain from causing the place to become unsafe by his positive act, or that of his foreman for which he is responsible.—Marks v. Hurley Mason Co., Wash., 131 Pac. 1122.

80.——Wrongful Discharge.—A master cannot discharge the servant engaged for a stipulated time for rudeness, where he has goaded him into desperation and has provoked him to rude and discourteous behavior.—Ross v. Grand Pants Co., Mo., 156 S. W. 92.

81. **Negligence**—Concurrent.—If the concurrent negligence of two or more persons results in an injury to a third person, the latter may recover from either or all.—Shield v. F. Johnson & Son Co., La., 61 So. 787.

82.——Concurrent.—A party cannot recover for the negligence of another where his own negligence was a concurring cause in producing the injuries.—Dreier v. McDermott, Iowa, 141 N. W. 315.

83.——Voluntary Drunkenness.—Voluntary drunkenness does not relieve a person from exercising the degree of care required of a sober man in the same circumstances; and, if his drunkenness renders him incapable of exercising such care, he contributes to any injury thereby sustained, and cannot recover for another's negligence.—Burleson v. Morrisville Lumber & Power Co., 86 Atl. 745.

84. **Pardon**—Reimbursement.—A pardon from the President to a person convicted of defrauding the government of certain public lands, upon full restitution to the satisfaction of the federal district attorney, gives the latter no authority to bind the government to reimburse the accused for the value of improvements and taxes paid.—Bradford v. United States, 33 Sup. Ct. Rep. 576.

85. **Partnership**—Declaration by Partner.—A partnership alleged to exist between defendants having been denied by them, declarations of each at different times to different persons, in the absence of the other, held admissible against both to establish the partnership.—Nilsson v. McDole, Wash., 131 Pac. 1141.

86.——Secret Profits.—Where a partner makes secret profits by becoming interested in a business which controls the sale of the products of a mine owned by the partnership, he must account to his copartners for such profits.—Hurst v. Brennen, Pa. 86 Atl. 778.

87. **Payment**—Application of.—Where neither the creditor nor the debtor applies a partial payment to any particular debt or to any part

of a single debt, the payment must be applied as the justice of the case demands.—Rodgers-Wade Furniture Co. v. Wynn, Tex., 156 S. W. 340.

88. **Principal and Agent**—Conversion.—The act of an agent of a warehouseman in delivering plaintiff's cotton to a third person, knowing he did not own it, after having given plaintiff a warehouse receipt therefor, constituted a conversion, for which he was personally liable.—Trippe v. W. J. Bell & Co., Ga., 78 S. E. 126.

89.——Undisclosed Principal.—An action for the price of goods sold cannot be maintained against both the agent and the undisclosed principal after the principal is disclosed.—Robison v. Bass, 141 N. Y. Supp. 693.

90. **Quieting Title**—Burden of Proof.—In proceedings to remove a cloud, the complainant must show with certainty the validity of his own title, and the invalidity of the title of defendant.—Hill v. Da Costa, Fla., 61 So. 750.

91.——Cloud on Title.—An owner is entitled to have an apparently valid lien for water charge for an unmetered fire hydrant, which was in fact void, because the charge was not fixed by the board of alderman, canceled as a cloud on her title.—Sayer v. City of New York, N. Y., 101 N. E. 764.

92.——Condition Precedent.—Where a tender is a condition precedent to a decree quieting title, a payment to the party entitled thereto must be provided for or made before a decree is entered, but a personal tender is not requisite to the bringing of the action.—Smith v. J. R. Newberry Co., Cal., 131 Pac. 1055.

93. **Receiving Stolen Goods**—Possession.—Manual possession of the property is not essential to the crime of knowingly receiving stolen property, but it is sufficient if the property be received by defendant's authorized agent.—Price v. State, Okla., 131 Pac. 1102.

94. **Release**—Consideration.—A release of a master's liability for a servant's injuries in consideration of one day's employment at the usual pay, etc., the master being required by the servant's previous contract to employ him for the time referred to, held not based on a sufficient consideration, and invalid.—Freeman v. Morrow, Tex., 156 S. W. 284.

95.——Joint Tortfeasor.—The release of one of several joint tortfeasors by the injured party does not of itself release the others.—Parry Mfg. Co. v. Crull, Ind., 101 N. E. 756.

96. **Removal of Causes**—Separable Controversy.—Where plaintiff took assignments of ten causes of action against defendant, an alien corporation, and some of plaintiff's assignors were aliens and some were citizens, a single suit on all the claims was removable.—Patterson v. Bucknall S. S. Line, U. S. D. C., 203 Fed. 1021.

97. **Rewards**—Joint Efforts.—One who performs services leading to the conviction of a criminal jointly with others is entitled to the reward offered for such conviction, it not being necessary that he perform the whole services, even though the various persons who participated in the work had no knowledge that the others were investigating the crime.—Tobin v. McComb, Tex., 156 S. W. 237.

98. **Sales**—Consideration.—Where defendant gave plaintiff his note for goods sold, and plaintiff discharged the obligation to the bank, which had discounted the note, and delivered it to defendant upon his promise to deliver to plaintiff potatoes to the value of the note, there was a sufficient consideration for the promise.—Welsh v. Jones, 141 N. Y. Supp. 656.

99.——Waiver.—The right of a conditional seller of chattels to foreclose on the buyer's default is not waived by having accepted payments that were waivers of prior defaults.—Bloomingdale v. Braun, 141 N. Y. Supp. 590.

100. **Searches and Seizures**—Common Law.—At common law the search warrant was used in preparing evidence against felons and to recover stolen goods and not to try title of or right to the possession of goods.—People ex rel. Robert Simpson Co. v. Kempner, N. Y., 101 N. E. 794.

101. **Sheriffs and Constables**—Abuses of Process.—An officer who abuses the process under which he assumes to act by committing an act not warranted thereby ceases to act under and by virtue of the process, and becomes a trespasser ab initio and liable as such.—James v. Graham, S. C., 78 S. E. 82.

102. **Tender**—Offer.—An offer to pay the amount due on a mortgage or other lien on condition that the lien be satisfied and released of record before the money is surrendered is not a tender.—Masson v. Indiana Lighting Fixture Co., Ind., 101 N. E. 753.

103. **Torts**—Obstructing.—One knowingly interfering with the efforts of those engaged in putting out a fire and thus causing greater loss by the fire than would have been otherwise sustained, or negligently or wilfully conducting himself with knowledge of the facts and situation so as to cause an interference directly resulting in loss, is liable.—Hurley v. Missouri, K. & T. Ry. Co., Mo., 156 S. W. 57.

104. **Trover and Conversion** — Burden of Proof.—In an action of trover for the value of logs removed from land by grantee of the owner, the burden was on the plaintiff, who had a mere license to cut timber during the lifetime of the owner, to prove that he cut the logs in controversy while the owner lived.—Fowler v. Ramsey, Fla., 61 So. 747.

105. **Trusts**—Corporation Trustee.—A corporation may act as a trustee for any purpose within the scope of its charter or the governing statute.—Conley v. Daughters of the Republic, Tex., 156 S. W. 197.

106. **Vendor and Purchaser**—Deficiency.—Complainant having purchased an option on certain selections of unsurveyed public land under the belief by both parties that, when surveyed, the tract would contain 400 acres, when, in fact, it contained only 224.41 acres, complainant was entitled to rescind for mutual mistake.—McCrea v. Hinkson, Ore., 131 Pac. 1025.

107.——Election of Remedy.—A defrauded purchaser has two remedies: one to rescind, tender back all he has received, and recover what he has paid, so that the parties may stand in statu quo; and also the right to affirm the contract and recover damages for the fraud.—Baker v. Becker, Wis., 141 N. W. 304.

108.——Insanity of Grantor.—Where a conveyance is voidable on account of the insanity of the grantor, the grantee cannot pass title to an innocent purchaser.—Mitchell v. Inman, Tex., 156 S. W. 290.

109. **Water and Water Courses**—Discrimination.—An ordinance enacted by a city, authorized to furnish water to its inhabitants, requiring all assessments for unmetered water consumers to be assessed against the owners of the property, instead of the consumers, is unjust, unreasonable, and an arbitrary distinction between the inhabitants, so as to be void; another by-law, which required all unmetered assessments to be paid in advance, furnishing the city all necessary protection.—Farmer v. City of Nashville, Tenn., 156 S. W. 189.

110. **Wills**—Accretion.—Accretion takes place for the benefit of the legatees in case of the legacy being made to several conjointly.—Succession of Villa, La., 61 So. 765.

111.——Chain of Title.—Even after the lapse of four years, a domestic will may be probated to establish a link in a chain of title.—Penay Vidaurri's Estate v. Bruni, Tex., 156 S. W. 315.

112.——Partial Intestacy.—A part of a will cannot be rejected for want of testamentary capacity of testator while another part is admitted to probate, at least in the absence of evidence that testator's mind as to the subjects treated of or devisees affected by the part of the will rejected was prejudiced or unbalanced.—Hildreth v. Hildreth, Ky., 156 S. W. 144.

113.——Prior Conveyance.—A will devising real estate passes no title, where, subsequent to the will, testator conveyed all his real estate.—Guynn v. Wabash County Loan & Trust Co., Ind., 101 N. E. 738.